Filed 9/17/12 P. v. Mumin CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RAHEEM MUMIN, Defendant and Appellant.	B237010 (Los Angeles County Super. Ct. No. NA088660)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur Jean, Jr., Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On April 8, 2009, Los Angeles Police Officer Michael Saragueta worked in an undercover capacity with several other officers, conducting a controlled narcotic purchase. As part of this operation, Officer Saragueta and his partner, Officer Olsen, went to a location known as a high narcotics area. When they arrived, appellant approached them and asked if they needed anything. Officer Saragueta testified he told appellant he was looking for a "40," which meant he wanted $40 worth of rock cocaine. Appellant asked the officers if they knew anyone in the neighborhood and if they were police. Officer Saragueta responded by "dropping some names or mentioning some names of individuals that I knew in the area as well as telling him that we were not the police." Appellant then retrieved a clear plastic bindle from his rear waistband, and removed two off-white solids resembling rock cocaine. He handed the two objects to Officer Saragueta and in return, Officer Saragueta gave appellant $40 in cash. The two officers then left.

Appellant got into a car and drove westbound. He was stopped by Officer Allan Rabina and his partner, Officer Walden, who were part of the operation. Officer Rabina testified that he asked appellant for his driver's license, filled out a field identification card with appellant's information, took appellant's picture, and released him.

Officer Saragueta testified that the person in the picture taken by Officer Rabina was the same person who sold him the cocaine. He further testified that appellant was not arrested until two years after the controlled buy because the operation was part of a long-term investigation being conducted over several months in conjunction with federal agencies, and the police did not want "people on the street [to] start talking and get leery of dealing with people or making additional deals."

Veronica Chiquillo, a criminalist, testified that she tested the items Officer Saragueta purchased from appellant, and determined that they were cocaine base.

Appellant testified on his own behalf. He denied selling anything to Officers Saragueta or Olsen. He admitted he was pulled over, and that his picture was taken before he was let go.

After a mistrial was granted due to the unavailability of a defense witness, an amended information, filed October 12, 2011, charged appellant with one count of sale/transportation/offer to sell a controlled substance in violation of Health and Safety Code section 11352, subdivision (a). It was further alleged that appellant had served nine prior prison terms (Pen. Code, § 667.5, subd. (b)), and has suffered four "strikes" (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On the date of trial, the trial court offered appellant a continuance to allow him time to subpoena defense witnesses. Appellant, who was proceeding in propria persona, declined and declared himself ready. A jury found appellant guilty on the charged count. In a bifurcated bench trial, the trial judge found all prior allegations to be true. The trial court struck three of the strikes, denied probation, and sentenced appellant to state prison for 12 years as follows: the high term of five years on the charged count, doubled because of the remaining strike, plus two one-year enhancements for the two most recent prison priors.

After appellant filed a timely notice of appeal, this court appointed counsel to represent him. After examining the record, appointed appellate counsel filed a brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. (See *Smith v. Robbins* (2000) 528 U.S. 259, 264.) On May 21, 2012, we advised appellant he had 30 days within which to submit by brief or letter any contentions or arguments he wished this court to consider. On May 16, 2012, appellant filed a request for new appellate counsel. This court denied the request June 1, 2012. On June 11, 2012, appellant filed a letter brief raising the following issues.

First, he contends the trial court erred in finding one of the strikes to be true.

The information alleged three strikes based upon three robbery convictions. Appellant contends he pleaded no contest on all three robbery counts, partially because of a purported promise that the three convictions would only count as one strike. Even if true, appellant was not prejudiced, as the court struck two of the robbery convictions and used the remaining conviction as a strike. Thus, appellant received the benefit of the purported promise since the three robbery convictions were counted only as one strike.

Second, appellant contends the trial court erred in allowing the prosecution to authenticate the Penal Code section 969b package used to prove a 1991 conviction by the testimony of a fingerprint expert. A review of the record, however, shows appellant did not raise authentication issues. Rather, he asked to "see the fingerprint card under *Perry*," and the prosecution called a fingerprint expert to address appellant's concern. Moreover, even if true, appellant was not prejudiced because the trial court did not use the 1991 conviction to impose any additional punishment, such as a one-year enhancement.

Third, appellant complains he was denied his right to a speedy trial, but concedes that on June 29, 2011, his trial counsel filed a motion to dismiss on this ground. As appellant provides no further analysis on this issue, he has forfeited this claim. (See *Diamond Springs Lime Co. v. American River Constructors* (1971) 16 Cal.App.3d 581, 608 [point raised without legal analysis or authority is forfeited].)

Fourth, he contends the prosecution committed misconduct and/or violated his rights under *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*), by suppressing the "source and ledger" of the funding used in the controlled narcotic buy. As appellant provides no case authority or analysis on this issue, he has forfeited this claim. (See *Diamond Springs Lime Co. v. American River Constructors*, *supra*, 16 Cal.App.3d at p. 608.) In addition, the information about the source of the

money used in the controlled buy is not legally relevant to appellant's defense, as his conviction was based on the jury's finding that he sold drugs to an undercover police officer.

Fifth, appellant contends he was denied a fair trial because he was in his prison jumpsuit on the first day of trial. A review of the record, however, shows that the trial court asked appellant if he had civilian clothes, and appellant responded, "No sir. I don't have civilian clothes. It is not even necessary at this point." Appellant's concession that it was not necessary for him to be in civilian clothes constituted a forfeiture of this claim of error.

Sixth, appellant contends the trial court erred in imposing a high term of five years, as the charging statute does not provide for that term. A review of Health and Safety Code section 11352, subdivision (a), effective on the date of appellant's conviction, shows that a defendant was subject to imprisonment for "three, four, or five years" for violating the statute. Thus, the trial court could have sentenced appellant to a high term of five years under section 11352, subdivision (a). There was no error.

Finally, appellant contends the prosecution committed *Brady* violations, but does not specify the purported *Brady* violations. Thus, he was forfeited any claim of error. (See *Diamond Springs Lime Co. v. American River Constructors*, *supra*, 16 Cal.App.3d at p. 608.)

This court has examined the entire record in accordance with *People v. Wende*, *supra*, 25 Cal.3d at pages 441-442, and is satisfied defendant's attorney

has fully complied with the responsibilities of counsel, and no arguable issues exist. Accordingly, we affirm the judgment of conviction.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.